

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

No. 2258

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Introduced by Assembly Member ~~Ammiano~~ Wieckowski

February 24, 2012

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An act to ~~amend~~ add Section ~~12313~~ of 17044.1 to the Business and Professions Code, relating to ~~uniform weights and measures~~ unfair trade practices.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2258, as amended, ~~Ammiano~~ Wieckowski. ~~Weights and measures. Retail fuel sales: price discounts.~~

*The Unfair Practices Act prohibits certain unfair trade practices. Under the act, it is unlawful for any person engaged in business to sell or use any article or product as a loss leader. Existing law defines "loss leader" as any article or product sold at less than cost where the purpose is to induce, promote, or encourage the purchase of other merchandise, where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers, or where the effect is to divert trade from or otherwise injure competitors.*

*This bill, for purposes of determining whether an article or product is a loss leader, would provide that a person or related person, as defined, selling automotive fuel at the retail level does not sell below cost if a fuel price discount, concession, or reduction is provided in connection with the purchase of other articles or products and the total price of the fuel and the other articles or products equals or exceeds the total cost of the fuel and the other articles or products. The bill would define various terms for these purposes.*

~~Existing law requires that contracts made within this state for work to be done or for anything to be sold or delivered by weight or measure be construed according to the common standards, or according to the weights and measures of the metric system authorized by Congress, as the contract provides. Existing law provides that the definitions of basic units of weight and measure, and the tables of weight and measure and weights and measures equivalents, as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in this state.~~

~~This bill would make a technical, nonsubstantive change to the latter provision by instead referring to the National Institute of Standards and Technology, the successor to the National Bureau of Standards.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 17044.1 is added to the Business and
- 2     Professions Code, to read:
- 3     17044.1. (a) For purposes of Sections 17030, 17043, and
- 4     17044, a person or related person does not sell below cost if all
- 5     of the following apply:
- 6         (1) The person or related person sells fuel.
- 7         (2) The person or related person gives, extends, or offers a fuel
- 8     price discount, price concession, or price reduction.
- 9         (3) The basis of the fuel price discount, price concession, or
- 10    price reduction is the purchase or purchases of another article or
- 11    product, or other articles or products, in the same transaction or
- 12    in separate transactions, from the person or related person.
- 13         (4) The total price of the fuel and the other article or product,
- 14    or the other articles or products, equals or exceeds the total cost.
- 15    (b) For purposes of this section, the following terms have the
- 16    following meanings:
- 17         (1) "Fuel" means all grades of automotive fuel, including diesel,
- 18    plant-based, or other alternative fuels, sold to consumers at the
- 19    retail level.
- 20         (2) "Related person" means a person, as defined in Section
- 21    17021, that directly or indirectly through one or more
- 22    intermediaries, controls, or is controlled by, or is under common
- 23    control with, the person specified.

1     (3) “Total cost” means the aggregate cost of the fuel and the  
2 other article or product or other articles or products. The separate  
3 costs of fuel and the other article or product or other articles or  
4 products shall be determined as set forth in Sections 17026, 17027,  
5 and 17029. Cost shall be measured over a commercially reasonable  
6 period of time. Cost shall not include the fuel price discount, price  
7 concession, or price reduction.

8     (4) “Total price” means the price of the fuel, taking into account  
9 the fuel price discount, price concession, or price reduction, plus  
10 the price of the other article or product or prices of the other  
11 articles or products. Price shall be measured over a commercially  
12 reasonable period of time.

13     ~~SECTION 1. Section 12313 of the Business and Professions~~  
14 ~~Code is amended to read:~~

15     ~~12313. The definitions of basic units of weight and measure,~~  
16 ~~and the tables of weight and measure and weights and measures~~  
17 ~~equivalents, as published by the National Institute of Standards~~  
18 ~~and Technology are recognized and shall govern weighing and~~  
19 ~~measuring equipment and transactions in this state.~~